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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/486,970	05/23/2000	ROBERT W. FINBERG	DFN-025US	8077

7590 05/28/2002
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BOSTON, MA 02109

EXAMINER

RUSSEL, JEFFREY E

ART UNIT	PAPER NUMBER
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1653

DATE MAILED: 05/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/486,970

Applicant(s)

FINBERG ET AL.

Examiner

Jeffrey E. Russel

Art Unit

1653

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 08 May 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
(a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ they raise the issue of new matter (see Note below);
(c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See attachment.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: None.Claim(s) objected to: 8.Claim(s) rejected: 1-7, 9, and 10.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Art Unit: 1653

1. The rejection under 35 U.S.C. 112, second paragraph, will be maintained for the reasons of record. Applicants have not demonstrated that the term "analog" would have the definition recited in Applicants' arguments. Compare, e.g., Donahoe et al and Alstyne et al, discussed in the previous Office action. While analogs may be exemplified in Applicants' specification, examples do not constitute definitions, and limitations found only in the specification will not be read into the claims.

2. Upon entry of the proposed amendments filed May 8, 2002, the rejection over Higashijima et al set forth in paragraph 3 of the final Office action will be overcome because Higashijima et al do not teach or suggest the treatment of septic shock; the rejection of claims 1-7 and 9 over the Cabeza-Arvelaiz et al article set forth in paragraph 4 of the final Office action will be maintained; and the rejection of claim 10 over the Cabeza-Arvelaiz et al article set forth in paragraph 5 of the final Office action will be maintained.

The Cabeza-Arvelaiz et al article teaches the positive process steps and the results claimed by Applicants, which is sufficient to anticipate the claimed invention. Patentability can not be based merely upon the employment of descriptive language not chosen by the prior art. In re Skoner, 186 USPQ 80, 82 (CCPA 1975). Further, a prior art reference need not recognize or suggest Applicants' intended results in order to anticipate Applicants' claimed method on the basis of inherency. Ex parte Novitski, 26 USPQ2d 1389, 1391 (BPAI 1993). The examiner agrees that if it could be shown that the toxins of the Cabeza-Arvelaiz et al article were administered in such a way that the interaction of G protein and CD14 was not inhibited, then the rejections would be withdrawn. However, no such evidence is of record, and it does not appear from the disclosure of the invention that any special steps are needed in order to achieve such a

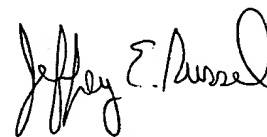
Art Unit: 1653

result, e.g., any administration of the active agent will inhibit the interaction. With respect to claim 5, the examiner maintains that the toxins of the Cabeza-Arvelaiz et al article are analogs of mastoparan for the reasons of record. Even using the definition of "analogs" provided in Applicants' arguments, Applicants have not explained why the toxins of the Cabeza-Arvelaiz et al article are not structurally similar to mastoparan.

3. Upon entry of the proposed amendments filed May 8, 2002, claim 8 will be objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. The Cabeza-Arvelaiz et al article teaches only inhibiting the effects of LPS, which is the product of gram-negative bacteria, and does not teach or suggest treating septic shock caused by gram-positive bacteria.

4. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeffrey E. Russel at telephone number (703) 308-3975. The examiner can normally be reached on Monday-Thursday from 8:30 A.M. to 6:00 P.M. The examiner can also be reached on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Christopher Low can be reached at (703) 308-2923. The fax number for Art Unit 1653 for formal communications is (703) 305-3014; for informal communications such as proposed amendments, the fax number (703) 746-5175 can be used. The telephone number for the Technology Center 1 receptionist is (703) 308-0196.



Jeffrey E. Russel
Primary Patent Examiner
Art Unit 1653

JRussel
May 22, 2002